

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Chapter 7 (Converted)

ALEXIS D. FURER,

Case No. 09-23972

NOTICE OF MOTION
FOR RELIEF FROM STAY

Debtor.

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PLEASE TAKE NOTICE that upon the annexed affirmation of WILLIAM FIELDING, ESQ., an associate of the law firm of DEUTSCH & SCHNEIDER, LLP, dated July 9, 2010, affidavit of MARYANN MONTESERRATO of EMIGRANT MORTGAGE COMPANY, INC., dated June 29, 2010, and attached exhibits, a motion will be made to this Court on behalf of EMIGRANT MORTGAGE COMPANY, INC. as set forth below:

JUDGE: HON. ROBERT D. DRAIN

RETURN DATE & TIME: **September 1, 2010 at 10:00 A.M.**

COURTHOUSE: United States Bankruptcy Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

RELIEF REQUESTED: An Order granting Movant relief from stay for cause pursuant to 11 U.S.C. 362 (d)(1), granting Movant leave to continue foreclosure proceedings with respect to the premises located at:

8 Pond Hill Road, Chappaqua, New York

and for such other, further and different relief as may seem just, proper and equitable.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested, must be served upon and received by DEUTSCH & SCHNEIDER, LLP, at their offices at 79-37 Myrtle Avenue, Glendale, New York 11385 no later than seven days prior to the motion date set forth above and filed with the Clerk of the United States

Bankruptcy Court for the Southern District of New York at 300
Quarropas Street, White Plains, New York 110601, no later than one
day following the date of service.

Dated: Glendale, New York
July 9, 2010

/s/ William J. Fielding

William J. Fielding, Esq.
DEUTSCH & SCHNEIDER, LLP
Attorneys for
EMIGRANT MORTGAGE COMPANY, INC.
79-37 Myrtle Avenue
Glendale, New York 11385
(718) 417-1700

TO: SERVICE LIST

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Chapter 7 (Converted 5/28/10)

ALEXIS D. FURER,

Case No. 09-23972- RDD

AFFIRMATION

Debtor.

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William Fielding, Esq., the undersigned, an attorney duly admitted to practice before this Court, affirms under the penalty of perjury as follows:

1. I am an associate of the law firm Deutsch & Schneider, LLP, attorneys for EMIGRANT MORTGAGE COMPANY, INC. (hereinafter, "Movant"). As such, I am fully familiar with the circumstances of this case based upon the file records, communication with the Movant, and a review of the file.

2. I make this affirmation in support of the within motion for an Order vacating the automatic stay for cause, pursuant to 11 U.S.C. Section 362(d)(1) with respect to the property located at 8 Pond Hill Road, Chappaqua, New York.

3. Jurisdiction is conferred on this Court by the provisions of 28 U.S.C. 1334. This is a proceeding to terminate and annul the automatic stay and is therefore a "core" proceeding within the meaning of 28 U.S.C. Section 157 (b)(2).

4. The Movant is a corporation duly organized and existing under and by virtue of the laws of the State of New York, with an office for the conduct of business at 5 East 42nd Street, New York,

New York 10017.

BACKGROUND

5. The Movant holds a certain note and duly recorded mortgage dated 08/13/07 made by ALEXIS D. FURER, in the original amount of \$549,750.00.

6. Said Mortgage constitutes a first lien upon the premises known as 8 Pond Hill Road, Chappaqua, New York (the "Property"), as fully described in the relevant pages of Mortgage documents annexed hereto as Exhibit "A".

7. According to the Movant's records, the debtor first defaulted on the mortgage payments due for the month of 12/1/08, and forward. Movant commenced a foreclosure action against the debtors by filing of a summons and complaint in the Supreme Court of New York State, Westchester County, on 5/29/09 under Index No. 12556/09.

8. However, said action was stayed by the debtor's filing of the instant bankruptcy case on 10/19/09 under Chapter 13 of the bankruptcy code.

9. The parties discussed options available to the Debtor over a period of months, and during the time this Case was in Loss Mitigation. In February, we were advised the Debtor was inclined to accept a six months' forbearance option to allow a sale of the property while making reduced payments of \$1,500.00 to the Movant during this period. Upon information and belief, an initial payment of \$1,500.00 was received sometime in March 2010 as payment

for the February installment due, but since that time there have been no payments received by the Movant, and we have received no signed forbearance agreement. If there was a written forbearance agreement entered into between the parties, there have been defaults in payment thereon. If not, then defaults exist with respect to the monthly mortgage installments due post-petition.

At the prior Loss Mitigation status hearing held April 16, 2010, the Court was advised the Debtor would be converting from Chapter 13 to Chapter 7. That conversion occurred 5/28/10, according to PACER.

9. As detailed by the attached affidavit of Emigrant's foreclosure specialist, and the Motion Work Sheet attached hereto as **Exhibit "B"**, the Debtor is currently five (5) months in arrears for monthly post-petition mortgage payments. The arrears as of June 25, 2010 for such monthly payments alone, is no less than \$43,004.47, representing unpaid installments due for the months of 2/01/10 through 06/01/10. This figure does not include other fees and charges due.

10. Per the Movant's records, the total due Movant as of 6/25/10 is no less than \$686,093.01. This is not a payoff amount as it does not include other fees and charges.

11. Based on a Residential Appraisal Report dated May 13, 2010, the property has a fair market value of \$745,000.00. **Exhibit "C"**. Therefore, the Movant's lien interest in the debtor's real property is fully secured.

REQUEST FOR RELIEF

13. Bankruptcy Code section 362(d), which governs relief from the automatic stay, provides in pertinent part:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if--

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

I. THE AUTOMATIC STAY SHOULD BE VACATED FOR CAUSE
PURSUANT TO 11 U.S.C. SECTION 362(D) (1)

14. Failure to make post-petition mortgage payments constitutes "cause" to modify the automatic stay. *In re Prud'Homme*, 161 B.R. 747, 750 (Bankr. E.D.N.Y. 1993) (noting that "cause" exists to modify the stay where the debtor fails to make post-petition payments) *citing In re Frascatore*, 33 B.R. 687 (Bankr. E.D. Pa. 1983).

15. Here, cause exists to modify the stay because the Debtor has failed to pay the post-petition mortgage installments due for the months of February 2010 through and including June 2010. In re Taylor, 151 B.R. 646 (Bankr. E.D.N.Y. 1993) (stating that the debtor's failure to remit regular mortgage payments constitutes

sufficient "cause" to lift the automatic stay).

16. Thus, the automatic stay should be vacated for the Debtor's failure to make post-petition mortgage payments, pursuant to 11 U.S.C. Section 362(d)(1).

PROCEDURE

22. No prior application has been made for the relief requested herein.

23. The Debtor, Debtor's attorney, Chapter 7 Trustee and U.S. Trustee have been served with Notice of this Motion and Affirmation, as more fully set forth in the annexed affidavit of mailing.

WHEREFORE, your affirmant, as the attorney for the Movant, respectfully requests an Order of this court vacating the automatic stay for cause pursuant to 11 U.S.C. Section 362(d)(1), allowing the Movant, its agent, or assigns, leave to continue foreclosure proceedings with respect to the subject property, and for such other, further and different relief as to this Court may seem just, proper and equitable.

Dated: Glendale, New York
July 9, 2010

/s/ William J. Fielding

William J. Fielding, Esq.
DEUTSCH & SCHNEIDER, LLP
Attorneys for Movant
EMIGRANT MORTGAGE COMPANY, INC.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Chapter 7

ALEXIS D. FURER,

Case No. 09-23972

Affidavit of Service

Debtor.

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State of New York)

ss.:

County of Queens)

The undersigned hereby certifies under penalty of perjury that I am more than 18 years of age and that a true and correct copy of the foregoing NOTICE OF MOTION FOR RELIEF FROM STAY, WITH AFFIRMATION AND SUPPORTING PAPERS AND PROPOSED ORDER were served upon the parties set forth on the attached Service List by first class mail on July 9, 2010.

/s/ Natalia Thomas

NATALIA THOMAS

Sworn to before me this
9th day of July, 2010

/s/ William J. Fielding

Notary Public

WILLIAM J. FIELDING
Notary Public, State of New York
No. 02FI5067014
Qualified in Nassau County
Commission Expires October 15, 2010

EM-408 (b)

SERVICE LIST

Alexis D. Furer
8 Pond Hill Road
Chappaqua, NY 10514

David Stone, Esq.
P.O. Box 224
145 Huguenot Street
Suite 402
New Rochele, NY 10804

Mark S. Tulis, Chap. 7 Trustee
c/o Oxman Tulis Kirkpatrick
120 Bloomingdale Road
White Plains, NY 10605

United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

EM-408 (b)

Case No. 09-23972

Chapter 7

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

ALEXIS D. FURER,

Debtor.

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MOTION, AFFIRMATION, SUPPORTING PAPERS AND PROPOSED
ORDER VACATING STAY

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